Sia Yik Hung v Public Prosecutor

HIGH COURT (SIBU) — CRIMINAL APPEAL NO 20-41-29 OF 1996
TEE AH SING J
4 NOVEMBER 1997

Criminal Procedure *— Judgment — Grounds of judgment — Grounds of decision not given when order was made — Whether grounds for finding of guilt could be given at a later date — Criminal Procedure Code (FMS Cap 6) ss 176(ii)(x) & 307(iii)*

Criminal Procedure *— Jurisdiction of court — Juvenile court — Offence under s 4(b) of the Prevention of Corruption Act 1961 — Whether jurisdiction to try offence lay with juvenile court or sessions court — Juvenile Courts Act 1947 ss 3A(1) & 4(4)*

Criminal Procedure *— Juvenile court — Procedure in trial — Failure by magistrate to notify appellant's parent or guardian to attend proceedings — Mandatory requirement — Whether failure prejudiced the appellant — Juvenile Courts Act 1947 s 9*

Criminal Procedure *— Juvenile court — Procedure in trial — Failure to have probation officer sworn as witness — Whether this prejudiced the appellant*

Criminal Procedure *— Plea of guilty — Understanding charge — Failure to ascertain that the appellant understood the charge before admitting guilt — Whether juvenile court had such a duty — Whether juvenile court was correct in accepting plea — Juvenile Courts Act 1947 s 10(1) & (2)*

The appellant, a juvenile, was charged with an offence under s 4(b) of the Prevention of Corruption Act 1961 ('the PCA'). The juvenile court was satisfied that the offence was proved and ordered that the appellant be sent to Sekolah Tunas Bakti Kuching for three years or until he attained the age of 18, whichever was earlier, by virtue of s 12(1)(f) of the Juvenile Courts Act 1947 ('the JCA'). The appellant appealed against the decision of the juvenile court on the grounds that: (i) the sessions court is the only court that has jurisdiction to try corruption cases under the PCA and since a magistrate has no jurisdiction to try the case, it was therefore a nullity; (ii) the magistrate erred in law and procedure when he failed to explain to the appellant through the interpreter each ingredient and allegation in the charge and that the appellant admitted guilt without understanding the nature and consequences of his plea; (iii) the magistrate erred in law and procedure when he did not seek the views of the appellant's father and grandparents who should have been asked to be present in court when sentence was passed for the purpose of enquiring whether they were prepared to look after the welfare of the appellant; and (iv) the magistrate had not given reasons for the order at the time the order was made and this had affected the order. The appellant submitted that such reasons, which should have been given but were not, may not have influenced the mental process of the magistrate in arriving at the ultimate decision.

Held, setting aside the order of the juvenile court and ordering that the appellant be retried before another juvenile court:

(1) Section 3A(1) of the JCA allows a sessions court or a magistrate's court to try in a summary way any juvenile alleged to have committed a petty offence. However, the offence under s 4(b) of the PCA was not a petty offence as it was not listed in the schedule to the order made by the Chief Justice pursuant to s 3A of the JCA, nor did its punishment come within the ambit of para (1) of the schedule. Since the offence under s 4(b) of the PCA was not a petty offence, a sessions court or a magistrate's court had no jurisdiction to try it.

Furthermore, the JCA is a special law passed by Parliament to provide for the care and protection of children and young persons. The PCA is a general Act for the more effective prevention of corruption. Where a special provision is made in a special statute, it would exclude the operation of a general provision in the general law.

Also, s 4(4) of the JCA provides that a juvenile court shall have the jurisdiction to try all offences except those punishable by death. Since the punishment for an offence under s 4(b) of the PCA does not include death, it followed that the juvenile court had jurisdiction to try the offence (see pp 457B–I, 458A–C, 459H–I and 460A–B); *PP v Lau Chuo Kiow* Criminal Revision No KG 5 of 1984 distinguished; *PP v Chu Beow Hin* [1982] 1 MLJ 135 followed.

(2) There is no requirement under the JCA that the juvenile court needs to ascertain that a juvenile understands the nature and consequences of his plea before recording that the juvenile admits to the offence charged. Section 10 of the JCA is a modification of s 173 of the Criminal Procedure Code (FMS Cap 6) ('the CPC'). As such, s 173 of the CPC has no application in proceedings in the juvenile court. The juvenile court had complied with the requirements in s 10(1) and (2) of the JCA and was correct in accepting the appellant's admission of guilt (see p 460F–I).

(3) By virtue of the words 'and shall' in s 9 of the JCA, it is a mandatory requirement that the appellant's parent or guardian be notified that they are required to attend the proceedings in the juvenile court. There was nothing to show that the appellant's parent or guardian could not be found or were not residing within a reasonable distance, nor was it unreasonable to require their attendance. Failure of the juvenile court to satisfy this requirement had caused a miscarriage of justice and prejudice to the appellant's parent or guardian. Also, the probation officer should have been sworn as a witness and should have subsequently tendered his report in evidence. The failure to have the probation officer sworn as a witness had also prejudiced the appellant (see pp 461C–F and 463I).

(4) Although the magistrate gave an oral judgment, s 307(iii) of the CPC does not preclude him from writing his grounds of decision and serving it on the appellant upon the appellant lodging the notice of appeal. Section 176(ii)(x) of the CPC also provides that

the grounds of judgment must be among the records kept by the magistrate if the judgment was oral. These records have to be transmitted to the High Court in the event of an appeal. It was therefore perfectly in order for the magistrate to give his grounds for finding of guilt at a later date (see p 463F–H); *Balasingham v PP* [1959] MLJ 193 and *Law Nai Chiok & Anor v PP* [1996] 3 AMR 2906 distinguished.

[**Bahasa Malaysia summary**

Perayu, seorang juvana, dipertuduhkan dengan kesalahan di bawah s 4(b) Akta Pencegahan Rasuah 1961 ('APR'). Mahkamah juvana berpuas hati bahawa kesalahan itu telah dibuktikan dan memerintahkan bahawa perayu dihantar ke Sekolah Tunas Bakti Kuching selama tiga tahun atau sehingga dia mencapai umur 18 tahun, mengikut mana yang lebih awal, disebabkan s 12(1)(f) Akta Mahkamah Juvana 1947 ('AMJ'). Perayu merayu terhadap keputusan mahkamah juvana atas alasan bahawa: (i) mahkamah sesyen adalah satu-satunya mahkamah yang mempunyai bidang kuasa untuk membicarakan kes rasuah di bawah APR dan oleh kerana majistret tidak mempunyai apa-apa bidang kuasa untuk membicarakan kes, maka keputusan adalah suatu pembatalan; (ii) majistret terkhilaf di sisi undang-undang dan prosedur apabila beliau gagal menjelaskan kepada perayu menerusi jurubahasa setiap unsur dan pengataan dalam pertuduhan dan bahawa perayu telah mengaku salah tanpa memahami sifat dan akibat akuannya; (iii) majistret terkhilaf di sisi undang-undang dan prosedur apabila beliau tidak meminta pandangan bapa dan nenek serta datuk perayu yang sepatutnya telah diminta menghadiri mahkamah sewaktu hukuman dijatuhkan untuk tujuan membuat pertanyaan sama ada mereka bersedia memelihara kebajikan perayu; dan (iv) majistret tidak memberikan sebarang alasan untuk perintah semasa perintah dibuat dan ini telah menjejaskan perintah. Perayu menghujahkan bahawa sebab-sebab demikian, yang sepatutnya diberikan tetapi tidak diberikan, mungkin tidak mempengaruhi proses pemikiran majistret dalam mencapai keputusan terakhir.

Diputuskan, mengetepikan perintah mahkamah juvana dan memerintahkan bahawa perayu dibicarakan semula di hadapan mahkamah juvana yang lain:

(1) Seksyen 3A(1) AMJ membenarkan sebuah mahkamah sesyen atau mahkamah majistret untuk membicarakan secara terus mana-mana juvana yang dikatakan telah melakukan kesalahan yang remeh-temeh. Namun demikian, kesalahan di bawah s 4(b) APR bukanlah kesalahan remeh-temeh kerana ia tidak disenaraikan dalam jadual kepada perintah yang dibuat oleh Hakim Besar menurut s 3A AMJ, dan hukumannya tidak juga dirangkumi oleh perenggan (1) jadual itu. Oleh kerana kesalahan di bawah s 4(b) APR bukanlah kesalahan remeh-temeh, sebuah mahkamah sesyen atau mahkamah majistret tidak mempunyai bidang kuasa untuk membicarakannya.

A Tambahan pula, AMJ merupakan undang-undang khas yang diluluskan oleh Parlimen untuk memperuntukkan jagaan dan perlindungan kanak-kanak dan pemuda-pemudi. APR adalah Akta umum untuk pencegahan rasuah yang lebih berkesan. Di mana suatu peruntukan dibuat dalam statut khas, ia akan mengecualikan operasi peruntukan umum dalam undang-undang am.

B

Juga, s 4(4) AMJ memperuntukkan bahawa sebuah mahkamah juvana haruslah mempunyai bidang kuasa untuk membicarakan semua kesalahan melainkan yang boleh dihukum dengan hukuman mati. Oleh kerana hukuman untuk suatu kesalahan di bawah s 4(b) C APR tidak termasuk hukuman mati, ini bermakna bahawa mahkamah juvana mempunyai bidang kuasa untuk membicarakan kesalahan (lihat ms 457B–I, 458A–C, 459H–I dan 460A–B); *PP v Lau Chuo Kiow* Semakan Jenayah No KG 5 tahun 1984 dibeza; *PP v Chu Beow Hin* [1982] 1 MLJ 135 diikut.

D (2) Tiada keperluan di bawah AMJ bahawa sebuah mahkamah juvana dikehendaki memastikan bahawa juvana memahami sifat dan akibat akuannya sebelum merekodkan bahawa juvana mengakui kesalahan yang dipertuduhkan. Seksyen 10 AMJ adalah suatu pengubahsuaian s 173 Kanun Acara Jenayah (NMB Bab 6) ('KAJ'). Oleh itu, s 173 KAJ tidak terpakai dalam prosiding E mahkamah juvana. Mahkamah juvana telah mematuhi keperluan dalam s 10(1) dan (2) AMJ dan adalah betul dalam menerima akuan salah perayu (lihat ms 460F–I).

(3) Disebabkan perkataan-perkataan 'dan haruslah' dalam s 9 AMJ, ia adalah keperluan mandatori bahawa ibu bapa atau penjaga F perayu diberitahu bahawa mereka dikehendaki menghadiri prosiding di mahkamah juvana. Tiada apa-apa untuk menunjukkan bahawa ibu bapa atau penjaga perayu tidak boleh dijumpai atau tidak menetap dalam jarak yang munasabah, dan juga bukanlah tidak munasabah untuk menghendaki kehadiran mereka. Kegagalan mahkamah juvana untuk memenuhi keperluan G ini telah menyebabkan salah laksana keadilan dan memudaratkan ibu bapa atau penjaga perayu. Juga, pegawai perunding cara sepatutnya disumpah sebagai saksi dan seterusnya mengemukakan laporannya dalam keterangan. Kegagalan untuk menyumpah pegawai perunding cara sebagai saksi juga telah memudaratkan H perayu (lihat ms 461C–F dan 463I).

(4) Walaupun majistret telah memberikan penghakiman lisan, s 307(iii) KAJ tidak menghalang beliau daripada menulis alasan penghakiman dan menyampaikannya kepada perayu selepas perayu mengemukakan notis rayuan. Seksyen 176(ii)(x) KAJ I juga memperuntukkan bahawa alasan penghakiman mestilah berada di antara rekod yang disimpan oleh majistret sekiranya penghakiman adalah secara lisan. Rekod-rekod ini mestilah dihantar kepada Mahkamah Tinggi andainya rayuan dibuat. Maka ia adalah amat teratur untuk majistret memberikan alasan beliau

dalam membuat keputusan bersalah pada tarikh yang lain (lihat ms 463F–H); *Balasingham v PP* [1959] MLJ 193 dan *Law Nai Chiok & Anor v PP* [1996] 3 AMR 2906 dibeza.]

Notes

For a case on grounds of judgment, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 1459.

For cases on juvenile court , see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1532–1534.

For a case on procedure in trial, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 1659.

For a case on understanding charge, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) para 1810.

Cases referred to

Balasingham v PP [1959] MLJ 193 (distd)
Chua Ah Gan (f) v PP [1958] MLJ liv (refd)
Koh Mui Keow v R [1952] MLJ 214 (refd)
Lee Yu Fah & Ors v PP [1937] MLJ 179 (refd)
Law Nai Chiok & Anor v PP [1996] 3 AMR 2906 (distd)
Ong Ah Thoo v R [1949] MLJ 36 (refd)
PP v Chu Beow Hin [1982] 1 MLJ 135 (folld)
PP v Lau Chuo Kiow Criminal Revision No KG 5 of 1984 (distd)
Swander Singh a/l Bawa Singh v PP [1996] 1 CLJ 356 (refd)
Tukiran bin Taib v PP [1955] MLJ 24 (refd)

Legislation referred to

Criminal Procedure Code (FMS Cap 6) ss 173, 176(ii)(x), 305, 307(iii), 308
Juvenile Courts Act 1947 ss 3A, 4(2), (4), (5), 9, 10, 12(1), (2), 13
Prevention of Corruption Act 1961 ss 4(b), 28

Wong Sing Nang (*Wong Orlando Chua & Co*) for the appellant.
Awang Armadajaya bin Awang Mahmud (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Tee Ah Sing J: This is an appeal by Sia Yik Hung, a juvenile, who is the appellant against the decision of the Juvenile Court at Sibu made on 29 June 1996 whereby the juvenile court was satisfied that an offence has been proved on a charge under s 4(b) of the Prevention of Corruption Act 1961 ('the PCA'), and the appellant was sent to Sekolah Tunas Bakti Kuching for a period of three years or until he attains the age of 18, whichever is earlier, by virtue of s 12(1)(f) of the Juvenile Courts Act 1947 ('the JCA').

Learned counsel for the appellant submitted that the sessions court is the only court competent to try corruption cases under the PCA. The

A learned magistrate has no jurisdiction to hear the case and is therefore a nullity. In support, the case of *PP v Lau Chuo Kiow* (Criminal Revision No KG 5 of 1984) was cited.

He also cited s 3A of the JCA to contend that s 3A envisages that corruption case is triable only in the sessions court. Once it is constituted, B the sessions court shall sit as the juvenile court trying cases involving juveniles.

It was also submitted that the learned magistrate erred in law and procedure that when the charge was read to the appellant and after a guilty plea was taken, the learned magistrate failed to explain to the appellant the nature and consequence of the offence. There is no evidence on record C that the learned magistrate has explained clearly to the appellant that the appellant 'understands the nature and consequences of the plea'. In support, the case of *Chua Ah Gan (f) v PP* [1958] MLJ liv was cited.

It was further submitted that on p 19 of the record of appeal, the learned magistrate had wrongly explained the consequences of conviction D which reads: 'The offence, on conviction, shall be liable to an imprisonment for five years or fine of not exceeding RM10,000 or both'. The words 'not exceeding' are missing from the above sentences before the word 'for', ie it should be 'not exceeding five years'. This mistake had prejudiced the appellant.

E In support, the case of *Swander Singh a/l Bawa Singh v PP* [1996] 1 CLJ 356 was cited.

It was next submitted that the learned magistrate erred in law and procedure that he failed to explain to the appellant, through the interpreter, who is not represented by counsel, each ingredient and each question involved. Where the court is not satisfied that the appellant has understood F and admitted each and every allegation in the charge, a retrial will be ordered notwithstanding the provisions of s 173 of the Criminal Procedure Code (FMS Cap 6) ('the CPC') since the appellant has not in fact pleaded guilty (see *Koh Mui Keow v R* [1952] MLJ 214).

It was also submitted that the learned magistrate erred in law and G procedure in ordering the appellant to be sent to Sekolah Tunas Bakti Kuching in that in accepting the probation officer's report without calling him to give the substances of the report as evidence, as held in *Ong Ah Thoo v R* [1949] MLJ 36.

The learned magistrate erred in law and procedure when he did not H seek the views/opinions of the appellant's father and the grandparents who shall be asked to be present in court at sentencing so as to enquire whether they are prepared to look after the welfare of the appellant. From the notes of proceedings, there wasn't any evidence on record to show that.

It was also submitted that the learned magistrate erred in law and I procedure when accepting the probation report without examining the probation officer as to when he visited the appellant's house. The report just stated: 'During home visit, the juvenile was not at home'. The appellant's father in his affidavit stated that the probation officer never visited his house. He was called to go to the probation officer's office.

Then, the whole report was written from statement/interview in the probation officer's office and there wasn't any 'such home visit' as alleged in the probation report. A

The learned magistrate erred in law and procedure in accepting the two advisers' opinions when there was no evidence to support their opinions.

It was lastly submitted that the learned magistrate had not given reasons at the time the order was made. The petition of appeal was filed on 8 July 1996. Grounds for the finding of guilt (undated) was served on 6 September 1996, two months after filing the petition of appeal. B

It was submitted that the failure by the learned magistrate to give a 'reasoned order' at the time he made the order has affected the order. The absence of reasons at the material time indicates that such considerations and factors may not have influenced the mental process of the trial magistrate in arriving at the ultimate decision (see *Balasingham v PP* [1959] MLJ 193). C

The learned deputy public prosecutor submitted as follows:

(1) The JCA is a specific law for a specific group of persons and it overrides the general law, whether the CPC or the PCA. It was submitted that the instant case must be tried in accordance with the JCA. Section 4(4) of the JCA clearly states the jurisdiction of the juvenile court. D

Section 4(2) of the JCA clearly states the constitution of a juvenile court. So it was submitted that the magistrate has jurisdiction to try the case. E

(2) Under s 305 of the CPC, in plead guilty cases, there is no right of appeal except as to the extent and legality of the sentence.

(3) The case of *PP v Lau Chuo Kiow* (Criminal Revision No KG 5 of 1984) was distinguished in that it was not a juvenile case. F

(4) There is an allegation in the submission against the probation officer by the appellant, in reply it was submitted that it is not proper to make the allegation at this stage without the probation officer being called to answer the allegation.

(5) With reference to the case of *Law Nai Chiok & Anor v PP* [1996] 3 AMR 2906 cited by learned counsel for the appellant, it was submitted that in that case the learned magistrate gave an oral ruling where he gave his reasons and later added his reasons for a ruling on a later date. This is not so in our case because the learned magistrate did not give his reasons when delivering the oral ruling. G H

(6) The learned magistrate has not erred in law and procedure when he applied s 10 of the JCA.

In reply, learned counsel for the appellant submitted that in respect of the allegation against the probation officer, he made the allegation when the notice of motion was heard before the learned judge Steve Shim J on 3 July 1996. I

At p 14 of the record of appeal, the learned magistrate said: 'Upon finding of guilt satisfied and agreed with the PO and advisers to place the

juvenile at Sekolah Tunas Bakti Kuching for a period of three years or until he attains the age of 18, whichever is earlier, by virtue of s 12(1)(f) of the JCA. Reasons on appeal' and this is clearly lacking.

I shall now deal with the issues raised.

Section 3A(1) and (2) of the JCA reads as follows:

(1) Notwithstanding any other provision of this Act but subject to the provisions of the written laws relating to criminal procedure and the subordinate courts, a sessions court or a magistrate's court may try in a summary way any juvenile alleged to have committed a petty offence.

(2) The Lord President after consultation with the Chief Justice may from time to time by order published in the Gazette specify the classes of offences which are to be deemed petty offences for the purpose of this Act.

The classes of offences which are to be deemed petty offences under s 3A of the JCA are provided by LN 435/52 which reads as follows:

The Juvenile Courts Ordinance 1947

Order by the Chief Justice under s 3A

In exercise of the powers conferred upon me by s 3A of the Juvenile Courts Ordinance 1947, I hereby order that the offences set out in the schedule hereto are to be deemed petty offences for the purpose of the said Ordinance.

The schedule hereto —

(1) Any offences under any law for the time being in force the maximum punishment for which does not exceed any of the following: Imprisonment of either description for three months, a fine of 250 dollars, cancellation or suspension of any licence or permit or any combination of such punishments.

(2) Any offence punishable under reg 20A of the Emergency (Registration Areas) Regulations 1948.

(3) Offences punishable under any of the following sections of the Penal Code (provided that the subject matter of the offence does not exceed in value the sum of 25 dollars): 379, 380, 403, 406, 411, 414 and 417.

(4) Offences punishable under any of the following sections of the Penal Code: 323, 426 and 504.

(5) An offence under reg 20(1) of the Emergency Regulations 1951.

(6) Any offence punishable under s 79 of the Police Ordinance 1952.

(7) Any offence under s 23 of the Minor Offences Ordinance 1955.

The punishment under s 4(b) of the PCA provides as follows:

If —

(b) any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having after the coming into operation of this Act done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;

> he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years or to both.

It is to be noted that the offence under s 4(b) of the PCA is not listed in the schedule of the order made pursuant to s 3A of the JCA. Further, the punishment for the offence under s 4(b) of the PCA does not come within the ambit of para 1 to the said schedule.

Thus, I am of the view that it is very clear that the offence under s 4(b) of the PCA is not a petty offence. Since it is not a petty offence, a sessions court or a magistrate's court has no jurisdiction to try it.

The PCA was extended to Sarawak with effect from 7 March 1968 vide PU 93/68. The Subordinate Courts Act 1948 was extended to Sarawak with effect from 1 June 1981 vide PU (B) 264/81.

The effect of these two Acts are lucidly stated in an unreported case *PP v Lau Chuo Kiow* (Criminal Revision No KG 5 of 1984) where his Lordship Lee Hun Hoe CJ (Borneo) said:

> Before the extension of the Subordinate Courts Act 1948, all corruption cases in Peninsular Malaysia were dealt with by the sessions courts. At the time, we did not have sessions courts. So, in Sabah and Sarawak such cases were dealt with by the district court presided by either a stipendiary magistrate or magistrate of the first class. This is clearly stated under s 28 of [the PCA] as follows:
>
> > Notwithstanding the provisions of any written law to the contrary, a sessions court or in Sabah and Sarawak, the court of a magistrate of the first class, shall have jurisdiction to try any offence under this Act, or any prescribed offence, and to award the full punishment for the offence.
>
> After the extension of the Subordinate Courts Act 1948, the position was corrected. The said Act was extended to Sabah and Sarawak on 1 June 1981 (see PU (A) 357/80). To ensure smooth transition and jurisdictional uniformity, a new s 111 was added. It reads:
>
> > Where in any written law passed or made before the commencement of the extension of this Act to Sabah and Sarawak, there is, in relation to Sabah and Sarawak —
> >
> > (a) a reference to the court of a magistrate of the first class or a district court, there shall be substituted a reference to a sessions court;
> >
> > (b) a reference to the court of —
> > (i) a magistrate of the second class, a police court or a court of small causes;
> > (ii) a magistrate of the third class or a petty court,
> >
> > there shall be substituted a reference to a magistrate's court;
> >
> > (c) a reference to a stipendiary magistrate or a magistrate of the first class there shall be substituted a reference to a president of the sessions court; and
> >
> > (d) a reference to a magistrate of the second class or a magistrate of the third class there shall be substituted a reference to a second class magistrate.

A This section makes clear that the sessions court steps into the shoes of the district court. In effect, this section also makes clear that as from 1 June 1981 throughout Malaysia only sessions courts shall have jurisdiction to try corruption cases under [the PCA]. The position will be much clearer if one omits the words *or in Sabah and Sarawak the court of a magistrate of the first class* under s 28 of [the PCA].

B It is true that the criminal jurisdiction of the first class magistrate has been enhanced by s 85 of the Subordinate Courts Act 1948 which reads:

> Subject to limitations contained in this Act a first class magistrate shall have jurisdiction to try all offences for which the maximum term of imprisonment provided by law does not exceed 10 years imprisonment or which are punishable with fine only.

C The enlargement of the jurisdiction of the first class magistrate does not in any way change the situation as far as corruption cases are concerned. This is because s 28 of [the PCA] expressly empowers the sessions courts to hear corruption cases under the Act. In other words, after the extension of the Subordinate Courts Act 1948, no first class magistrate in Malaysia has jurisdiction to hear corruption cases.

D I agree with his Lordship Lee Hun Hoe CJ (Borneo) that s 28 of the PCA expressly empowers the sessions court to hear corruption cases under the PCA and that no first class magistrate has jurisdiction to hear corruption cases.

E However, his Lordship Lee Hun Hoe CJ (Borneo) did not decide that the juvenile court has no jurisdiction to hear corruption cases. Therefore, the unreported case *PP vs Lau Chuo Kiow* has no application to the present case as the issue whether a juvenile court has jurisdiction or not was not argued in that case.

F The preamble to the JCA reads as follows:

> An Act to provide for the care and protection of children and young persons and the establishment of juvenile courts.

The relevant part of s 3 of the JCA provides as follows:

G > Notwithstanding anything contained in any written law relating to the arrest, detention and trial of persons committing any offence, no juvenile when alleged to have committed the offence shall be arrested, detained or tried except in accordance with this Act.

Section 4(4) of the JCA provides that: 'A juvenile court shall have jurisdiction to try all offences except offences punishable with death'.

H I am of the view that the JCA is a special law passed by Parliament to provide for the care and protection of children and young persons, the establishment of juvenile courts and also to regulate the arrest, detention, trial of juveniles in the juvenile courts and the jurisdiction of the juvenile courts.

I On the other hand, the PCA is an Act for the more effectual prevention of corruption. In my view, this is a general Act.

When a special provision is made in a special statute, that special provision excludes the operation of a general provision in the general law

— generalibus specialia derogant (see *PP v Chu Beow Hin* [1982] 1 MLJ 135 at p 137).

Therefore, the JCA deals with a special case and, to that extent, the general provisions of the PCA do not affect its operation.

Since the punishment for an offence under s 4(b) of the PCA does not entail the death penalty, I am of the view that a juvenile court has jurisdiction to try this offence.

Section 4(5) of the JCA reads as follows:

> Save as modified or extended by this Act, the provisions of [the CPC] shall apply to juvenile courts as if juvenile courts were court of a magistrate of the first class.

The procedure in a juvenile court is set out in s 10 of the JCA. The relevant provisions read as follows:

> (1) Where a juvenile is brought before a juvenile court for any offence it shall be the duty of the court as soon as possible to explain to him in simple language the substance of the alleged offence.
>
> (2) After explaining the substance of the alleged offence, the court shall ask the juvenile whether he admits the facts constituting the offence.
>
> (6) If the juvenile admits the offence or the court is satisfied that it is proved, he shall then be asked if he desires to say anything in extenuation or mitigation of the penalty or otherwise. Before deciding how to deal with him the court shall obtain such information as to his general conduct, home surroundings, school record, and medical history, as may enable it to deal with the case in the best interests of the juvenile, and may put to him any question arising out of the information. For the purpose of obtaining such information as aforesaid or for special medical examination or observation the court may from time to time release the juvenile on bail or remand him to a place of detention.

In my view, s 10 of the JCA is a modification of s 173 of the CPC. As such, I am of the view that s 173 of the CPC has no application in respect of the proceedings in a juvenile court by virtue of s 4(5) of the JCA.

From the notes of proceedings dated 20 June 1996 (at p 12 of the appeal record), it is stated: 'charge read and explained to the JO in Foochow. I understand the charges and plead guilty. Brief facts of case read and explained to the JO. I admit to the brief facts of case as correct'.

I am of the view that the charges have been read and explained to the appellant. The appellant has also admitted the facts constituting the offence. So I am of the view that the juvenile court has complied with the procedure laid down in s 10(1) and (2) of the JCA.

There is no requirement under the JCA that before the juvenile court records that a juvenile admits to the offence charged, the juvenile court shall ascertain that the juvenile understands the nature and consequences of his plea. As adverted earlier, the provisions of s 173 of the CPC in particular s 173(b) of the CPC have no application in the juvenile court.

From the facts adduced and admitted by the appellant, the facts disclose that an offence under s 4(b) of the PCA has been committed by

A the appellant and therefore the juvenile court was correct in accepting the admission of guilt by the appellant.

Section 9 of the JCA reads as follows:

> Where a child or young person is charged with any offence or is for any other reason brought before a juvenile court, his parent or guardian may in
B any case, and shall if he can be found and resides within a reasonable distance, be required to attend at the court before which the case is heard or determined during all stages of the proceedings, unless the court is satisfied that it would be unreasonable to require the attendance of the parent or guardian.

C In my view, the words 'and shall if he can be found and resides within a reasonable distance, be required to attend at the court' in s 9 of the JCA is a mandatory provision because of the words 'and shall'. In my view, the appellant's parent or guardian should have been required by the juvenile court to attend court.

D There is nothing in the record to show that the appellant's parent or guardian cannot be found or were not residing within a reasonable distance. Similarly, there is no evidence on record that the court was satisfied that it would be unreasonable to require the attendance of the parent or guardian.

Further, there is nothing in the record to show that the appellant's
E parent or guardian was required by the juvenile court to attend court.

The record clearly shows that the parent or guardian was not present when the proceedings in the juvenile court proceeded.

In my view, the failure of the juvenile court to notify the parent or guardian that he is required to attend the court before which the case is
F heard or determined during all the stages of the proceedings has caused a failure of justice.

The relevant parts of s 12(1) and (2) of the JCA read as follows:

> (1) Where a juvenile court is satisfied that a offence has been proved, the court shall, in addition to any other powers exercisable by virtue of this
G Act or any other law for the time being in force, have power —
>
> (a) to admonish and discharge the offender;
>
> (b) to discharge the offender upon his entering into a bond to be of good behaviour and to comply with such order as may be imposed;
>
> (c) to commit the offender to the care of a relative or other fit person;
>
H (d) to order his parent or guardian to execute a bond to exercise proper care and guardianship;
>
> (e) without making any other order, or in addition to an order under para (c) or (d), to make a probation order under s 21;
>
> (f) to order the offender to be sent to an approved school or Henry
I Gurney school;
>
> (g) to order the offender to pay a fine compensation or cost; and
>
> (h) where the offender is a young person and the offence is punishable with imprisonment the court may, subject to s 15(2), impose upon him any term of imprisonment which could be awarded by a

sessions court or, if the court considers that its powers are inadequate, commit him to the High Court for sentence.

(2) An order under sub-s (1)(d) may be made against a parent or guardian who, having been required to attend, has failed to do so; but, save as aforesaid, no such order shall be made without giving the parent or guardian opportunity to be heard.

It is clear from the provisions of s 12(2) of the JCA that the JCA envisages that the parent or guardian of the appellant should have been present before the juvenile court exercises any of its powers under the JCA.

I am fortified in this view because of the words 'a parent or guardian who, having been required to attend' appearing in s 12(2) of the JCA. From the appeal record, it is clear that the juvenile court did not give notice to the parent or guardian of the appellant that he (the parent or guardian) be required to be present, this has caused a failure of justice.

Section 13 of the JCA reads as follows:

(1) Where a juvenile is charged before any juvenile court with any offence for the commission of which a fine may be imposed and compensation and cost or either or both of them may be awarded, and the court is of the opinion that the case would be best met by the imposition of all or any of those penalties, whether with or without any other punishment, the court may, in any such case, and shall, if the offender is a child, order that the fine imposed and compensation or cost awarded be paid by the parent or guardian of the juvenile instead of by the juvenile, unless the court is satisfied that the parent or guardian cannot be found or that he has not conduced to the commission of the offence by neglecting to exercise due care of the juvenile.

(2) Where a juvenile is charged with any offence, the court may order his parent or guardian to give security for his good behaviour.

(3) Where a court thinks that a charge against a juvenile is proved, the court may make an order on the parent or guardian under this section for the payment of compensation or costs or requiring him to give security for the good behaviour of the juvenile, without proceeding to record a finding of guilt against the juvenile.

(4) An order under this section may be made against a parent or guardian who, having been required to attend, has failed to do so; but, save as aforesaid, no such order shall be made without giving the parent or guardian an opportunity to be heard.

(5) Any sums imposed and ordered to be paid by a parent or guardian under this section, or on forfeiture of any such security as aforesaid, may be recovered from him in the manner provided by [the CPC] in like manner as if the order had been made on the conviction of the parent or guardian of the offence with which the juvenile was charged.

Again, it is clear from s 13 of the JCA that the parent or guardian of the appellant should be present before the juvenile court exercises its powers under s 13 of the JCA.

However, in the appeal record, there is nothing to indicate that the parent or guardian of the appellant was required to attend the juvenile court. Since the parent or guardian of the appellant was not notified that

A he was required to attend court, this has caused prejudice to the parent or guardian of the appellant.

I am of the view that the failure of the juvenile court to notify the parent or guardian of the appellant that the parent or guardian is required to be present has caused a miscarriage of justice.

B The case of *Balasingham v PP* [1959] MLJ 193 at p 194 cited by learned counsel for the appellant is distinguishable from the facts of the present case. In the present case, the learned magistrate has not given his reasons when he made the oral ruling on 29 June 1996.

Similarly, the case of *Law Nai Chiok & Anor v PP* [1996] 3 AMR C 2906 at p 2908 cited by learned counsel for the appellant is distinguishable from the facts of the present case. In the case, the learned magistrate on 11 May 1996 gave an oral ruling where he gave his reasons. Later, on 17 May 1996, he gave his grounds of decision which contained additional reasons. However, in our present case, the learned magistrate did not give any reasons when he made the oral ruling on 29 June 1996. In fact, he stated D in p 14 of the appeal record that 'Reasons on appeal'.

Subsection (iii) of s 307 of the CPC provides that when a notice of appeal has been lodged, the court appealed from shall make a signed copy of the grounds of decision and cause the same to be served upon the appellant or his advocate.

E From the record of the proceedings, it appears that the learned magistrate gave his findings and passed sentence immediately after the proceeding was concluded on 29 June 1996.

His finding or judgment is an oral judgment and by virtue of sub-s (iii) of s 307, it does not preclude the learned magistrate F from writing his grounds of decision and serving it on the appellant upon notice of appeal lodged by the appellant irrespective of whether or not the learned magistrate had written in his finding to that effect that 'reasons on appeal'. This is amplified by s 176(ii)(x) of the CPC which also provides that among the records to be kept by magistrates, in the event of an appeal being lodged, shall include the grounds of decision, if the judgment was G oral, which record must be transmitted to the High Court under s 308 of the CPC.

As such, it was perfectly in order for the learned magistrate to give his grounds for finding of guilt at a later date.

In the case of *Tukiran bin Taib v PP* [1955] MLJ 24, his Lordship H Bellamy J at p 25 said:

> A probation officer's report should always be called for ... . The probation officer should be called as a witness and give the substance of this report in evidence.

I However, in the instant case, the probation officer was not sworn as a witness. I agree with the contention of learned counsel for the appellant that the probation officer should have been sworn as a witness and then to tender his report. The failure to have the probation office sworn as a witness for him to tender his report has prejudiced the appellant.

In considering the proper order to be made, I bear in mind s 305 of the CPC which provides that a person who has been convicted on his plea of guilt is entitled to appeal only against the extent or legality of the sentence.

However, the appellate court can and will, where appropriate, act in revision and set aside a conviction (see *Lee Yu Fah & Ors v PP* [1937] MLJ 179).

In view of the reasons stated above, in exercise of my powers of revision, I set aside the order of the juvenile court whereby the appellant was sent to Sekolah Tunas Bakti Kuching for a period of three years or until he attains the age of 18 whichever is earlier and order that he be retried before another juvenile court.

I allow bail of RM1,000 with one surety and order that the appellant be present in the Juvenile Court Sibu on Saturday 22 November 1997 at 9am.

Original order set aside and appellant ordered to be retried before another juvenile court.

Reported by David Lai